

अण्डमान तथा  
Andaman And



निकोबार राजपत्र  
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No. 328, Port Blair, Tuesday, September 28, 2010

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अण्डमान तथा निकोबार प्रशासन  
ANDAMAN AND NICOBAR ADMINISTRATION  
सचिवालय/SECRETARIAT

NOTIFICATION

Port Blair, dated the 28<sup>th</sup> September, 2010

No. 312/2010/F.No.3-443/2005-Labour.— In pursuance of Sub-Section (1) of Section 17 of the Industrial Disputes Act, 1947 (Act No. 14 of 1947) read with Notification No. LR-1 (59)/55 dated 13<sup>th</sup> December, 1955 of the Govt. of India, Ministry of Labour and A&N Admn. Notification No.144/2008/F. No. 17-2/2007-Labour dated 7<sup>th</sup> October, 2008, the Secretary (Lab.), Andaman and Nicobar Administration hereby orders for publishing the following Award/Order given by the Labour Court, Andaman and Nicobar Islands, Port Blair against the case as was referred to the Labour Court, A&N Islands for adjudication vide Administration's Notification No. 3-443/2005-Labour dated 01/06/2006 in the matter of an Industrial Dispute between the Executive Engineer, APWD, CDI, Port Blair and Shri Nityananda Bala, Ex-DRM over the issue of alleged retrenchment of service.

**IN THE COURT OF THE PRESIDING OFFICER  
LABOUR COURT  
ANDAMAN AND NICOBAR ISLANDS**

Present: Shri Tapash Mookherjee, Presiding Officer,  
Labour Court, Port Blair

**I.D. Case No. 16 of 2006**

Nityananda Bala  
Ex-DRM  
Through the President, ANFSKU,  
Bambooflat, South Andaman.

..... First Party

**-Versus-**

The Executive Engineer,  
Construction Division – I,  
APWD, Port Blair.

..... Second Party

Friday, the 20<sup>th</sup> day of August, 2010

### **JUDGEMENT**

This is a reference under Section 12(5) of the Industrial Disputes Act, 1947 by Lt. Governor, Andaman and Nicobar Administration for dissolution of an alleged Industrial Dispute between Shri Nityananda Bala, Ex-DRM hereinafter described, as the first party and the Executive Engineer, Construction Division No. I, APWD, Port Blair hereinafter described, as the second party. The reference is “whether the action of the Executive Engineer, Construction Division – I, APWD in dis-engaging/terminating the service of Shri Nityananda Bala, Casual Mazdoor w.e.f. 01.07.2005 is legal and justified ? If not, to what relief the concerned workman is entitled to” ?

The facts in short behind the reference are as follows:-

The first party claims to have worked as a Daily Rated Mazdoor under the second party from 1.7.2000 to 30.6.2006, and suddenly his service is terminated on and from 1.7.2006 without any notice under section 25 F of the Industrial Disputes Act, 1947 and the first party challenges such termination. The dispute was referred to the Conciliation Officer, who after several attempts failed to solve the dispute by conciliation, and hence the dispute has been referred to this Tribunal for solution.

The second party has not appeared to contest the case, and hence the case has been heard ex-parte.

### **DECISION WITH REASONS**

The first party has stated in his affidavit under order XVIII Rule 4 CPC that he worked as a Daily Rated Mazdoor under the second party from 1.7.2000 to 30.6.2006, and that he completed 240 days service in each year during that period but his service had been illegally terminated on and from 1.7.2006 without any notice under section 25 F of the Industrial Disputes Act. The first party in his affidavit has further alleged that some of his juniors have been absorbed as Temporary Status Mazdoors while he has been deprived of the same benefit.

Ext-I is a photocopy of a letter addressed to the first party by the Assistant Engineer – VI, CD-I, APWD, Havelock. In the said letter the Assistant Engineer informed his superior i.e. the second party in the case that the first party worked under him continuously without any break for more than 240 days, and hence the service of first party deserved to be regularized in the department. Ex-I/I is the photocopy of another such letter in which also it is stated that the first party worked in the department from July 2000 to August 2004.

All the aforesaid evidence for the first party stand unchallenged and nothing contrary is there on record to disbelieve them. It is therefore, proved that the first party worked under the second party for more than 240 days in several years. The first party had therefore the right to have a notice before termination of his service under section 25 F of the Industrial Disputes Act, but there is nothing on record to show that such a notice had been served upon the first party by the second party. The termination of service of first party by the second party was therefore illegal.

The first party demands his re-employment under the second party in Temporary Status. But the first party was not in the employment under the second party when the Temporary Status Scheme 1993 of Government of India was introduced. So, the first party is not legally entitled to Temporary Status, but since the termination of the service of the first party was illegal as held above, the first party should be re-engaged with immediate effect by the second party in the position of a Daily Rated Mazdoor in which status the first party was working under the second party prior to the illegal termination of the service of the first party. It should be further noted that since after termination of his service the first party has not given any service to the office of the second party, and since it is not proved that the first party had not worked anywhere after the termination of his service by the second party, the first party is not entitled to any back wage. The reference is accordingly decided in favour of the first party.

Accordingly,

**Ordered**

That the action of the second party/the Executive Engineer, CD-I, APWD in disengaging/terminating the service of Nityananda Bala, Casual Mazdoor w.e.f. 01.07.2006 is hereby declared as illegal and unjustified, and the first party is entitled to be re-engaged by the second party as a Casual Mazdoor with immediate effect without any back wage. The reference is accordingly decided in favour of the first party.

Send a copy of this Judgement and order to the Andaman & Nicobar Administration alongwith a copy to the Assistant Secretary, Labour Department, Andaman & Nicobar Administration.

Dictated and corrected by me

Sd./-  
P.O

Sd./-  
20.08.2010  
(Tapash Mookherjee)  
Presiding Officer,  
Labour Court,  
Andaman & Nicobar Islands.

By order of the Secretary (Labour),

Sd./-  
(J.N. Roy)  
Assistant Secretary (Lab.)